

1
2
3
4
5 BRADLEY COLGATE, et al.,
6 Plaintiffs,
7 v.
8 JUUL LABS, INC., et al.,
9 Defendants.

Case No. [19-md-02913-WHO](#)

10
11
12
13
14
15
16
17
18
**CASE MANAGEMENT ORDER NO. 2 -
INITIAL CASE CENSUS**

CASE MANAGEMENT ORDER NO. 2—INITIAL CASE CENSUS

At the Court's request, Plaintiffs (through counsel appointed in CMO No. 1) and Defendants conferred to formulate an initial census to assist in determining Plaintiffs' leadership appointments and providing information regarding the scope of this litigation to assist in effective case management. Professor Jaime Dodge, Director of the Institute of Complex Litigation and Mass Claims at Emory Law School, provided guidance and assistance to the parties in their extensive negotiations to create an initial census best situated to the unique needs of this litigation. The parties stipulate to the content and timing of the initial census, and the Court hereby

ORDERS:

1. **Applicability:** Counsel who have applied for leadership positions (i.e., Lead Counsel, Plaintiffs' Executive Committee, Plaintiffs' Steering Committee, or other appointments) ("plaintiffs' leadership applicant firms") in MDL No. 2913 are required to complete the applicable census questions for all of their law firm's filed cases pending in federal court, as well as their firm's retained clients who have potential claims related to JUUL products. The initial census does not seek any information regarding any individual or entity that has not executed a retainer agreement. Counsel who did not apply for a leadership position are not required to participate in the initial census but may choose to do so. Non-leadership applicant firms who choose to participate in the census will be entitled to the reciprocal census data provided by Defendants, as set forth below.

1 2. **Online Platform:** The Court hereby appoints Ankura to serve as the online
2 platform for the initial census. The parties are directed to utilize Ankura's platform to fulfill their
3 census obligations and also, directly or through their designated representatives, to enter into a
4 contract with the company specifying the services to be provided, the costs of such services and
5 the parties' payment obligations. Ankura shall work with the parties to compile all necessary data
6 and provide census reports to the Court in a timely, accurate, and secure manner.

7 a. The MDL Online system for the litigation can be accessed by the parties at
8 <https://mdl-2913.mdl.online>.

9 b. Defense support inquiries to Ankura should be directed to: mdl-2913_Defense@ankura.com; plaintiffs' support inquiries should be directed to: mdl-2913_Plaintiffs@ankura.com.

12 3. **Content:** The initial census will collect data from plaintiff leadership applicant
13 firms as set forth in the exhibits attached to this Order for the following groups:

- 14 a. Filed Individual Cases Pending in Federal Court (Exhibit A);
- 15 b. Filed Non-Public Entity Class Cases Pending in Federal Court (Exhibit B);
- 16 c. Filed Public Entity Cases Pending in Federal Court (Exhibit C);
- 17 d. Retained Clients with Potential Cases - Non-Public Entity (Exhibit D);
- 18 e. Retained Clients with Potential Cases - Public Entity (Exhibit E).

19 4. **Data for Retained Clients with Potential Cases:** "Retained Clients with Potential
20 Cases" shall refer to individuals and entities who have executed a retainer agreement with a
21 plaintiffs' leadership applicant firm, but who have not filed a case in any court. The Court
22 appreciates that plaintiffs' leadership applicant firms may have varying levels of information for
23 these potential cases, as investigations are ongoing. Nevertheless, to provide the Court with a
24 more fulsome picture of this litigation's potential trajectory, as well as the nature of each firm's
25 involvement and scope of representations in this case, plaintiffs' leadership applicant firms should
26 complete the census in good faith and to the best of their ability.

27 5. **Certification:** Plaintiffs in Filed Individual Cases and putative class representatives
28 in Filed Non-Public Entity Class Cases must certify that the JUUL user used a JUUL product and

1 suffered an injury, as set forth in Exhibits A and B. The certification can be completed online
2 through the Ankura portal. If a plaintiff is unable to access the online portal, the certification can
3 be completed through paper format to be provided to Ankura by the plaintiff's counsel. For any
4 alleged injury other than economic loss, Plaintiffs should upload a medical record showing the
5 diagnosis and date, to the extent such a record is available. Alternatively, Plaintiffs may indicate
6 the date that medical records have been ordered. If no medical records have been ordered, counsel
7 must provide a short explanation, recognizing that lack of time or resources is not an adequate
8 explanation. Nothing in this Order is meant to pre-determine the relevance, if any, of medical
9 records in a particular case.

10 6. **Timing of Initial Census Data for Plaintiffs:** Plaintiff leadership applicant firms
11 must submit the initial census data to Ankura and any applicable certifications by **December 19,**
12 **2019.**

13 7. **Defendants' Reciprocal Census Obligations:** Within 30 days of the plaintiffs
14 providing completed census information, Juul Labs, Inc. shall conduct a search of its database of
15 online sales information, and for each individual who it can positively identify based on the
16 information (name, email address(es), and physical address(es) associated with the account)
17 provided in response to the census, shall produce sales data for such individuals indicating the
18 type and quantity of products purchased per order, date of such orders, total order dollar amount,
19 and order ship-to address, to the extent such data exist and can be located after a diligent search.
20 If Juul Labs, Inc. does not provide any data with respect to a plaintiff who indicated that he or she
21 purchased JUUL products directly from Juul online, Juul Labs, Inc. must certify under oath that a
22 reasonable search was conducted based on the information provided and that no online sales
23 information was located. The data produced shall be deemed to be authentic. Data defendants
24 provide for the initial census should be produced in accordance with the ESI Protocol to be entered
25 by the Court.

26 8. **Timing of Census Data for Defendants:** Defendants' census obligations shall be
27 completed with relevant data, documents, and certifications provided to Ankura no later than
28 **January 20, 2020.**

1 9. **Protection of Data:** The parties and Ankura are hereby ordered to take necessary
2 steps to protect the security and confidentiality of the data and information collected through the
3 census process. Information provided pursuant to this Order will be governed by the protective
4 order entered in this MDL. Until the protective order is entered, the information shall not be
5 shared with anyone other than counsel, and those acting under their supervision and control, and
6 Ankura. Given the sensitive nature of some of the data collected, the Court will permit the parties
7 to submit the initial census information under seal, subject to entry of the protective order, after
8 which the parties will have 45 days to meet and confer regarding the appropriate designations for
9 the various types of data collected. In the interim, to maximize the protections upon this data,
10 Professor Dodge is directed to work with Ankura and the parties to prepare a report for the Court,
11 which provides aggregated information relevant to the Court's dual purposes of leadership
12 selection and understanding the nature of this litigation, but omitting individual identifying
13 information about any particular plaintiff or retained client. The parties and the Court appreciate
14 Professor Dodge's continuing assistance in the census and creation of a framework for data
15 analytics in this case, and it is hereby affirmed that all protections extended to her work in CMO 1
16 continue to remain intact. In addition, she is authorized to request any information from Ankura
17 that she deems useful to her work in this MDL; however, at her request, any queries and reports
18 shall be aggregated or anonymized to the greatest extent possible. The Court reserves the right to
19 revisit whether either Professor Dodge or the Court need greater access to information, after the
20 parties complete the meet and confer process.

21 10. Nothing in this Order or the parties' positions or compromises relating to the initial
22 census shall impact any parties' rights or positions with respect to any future discovery, such as
23 future plaintiff /defense profile forms, fact sheets or document production.

24 **IT IS SO ORDERED.**

25 Dated: November 19, 2019

26 
27 William H. Orrick
28 United States District Judge

EXHIBIT A**Initial Census Data for Filed Individual Cases in Federal Court**

1. Case name
2. Case number
3. Name of the court in which the complaint was initially filed
4. Filing date of the complaint
5. Named plaintiff(s) in the complaint
6. Named defendant(s) in the complaint
7. Name of the JUUL user identified in the complaint
8. User's date of birth
9. User's social security number – last four digits
10. Current address of the JUUL user
11. Is the JUUL user deceased? [Yes/No]
12. Was the case brought by a representative (e.g., JUUL user was a minor, incapacitated or deceased):
 13. a) Name of the JUUL user's representative
 14. b) Relationship of the representative to the JUUL user
 15. c) Current address of the representative
16. Plaintiff law firm(s) representing the plaintiff(s), address, phone number, and email address
17. Name of the counsel responsible for completion of this form, firm name, address, phone number, and email address
18. JUUL Usage Information:
 19. a) Did the JUUL user purchase JUUL products? [Yes/No]
 20. b) Did the JUUL user ever purchase JUUL products directly from JUUL Labs, Inc. online (i.e., from juul.com or juulvapor.com, as opposed to another retailer)? [Yes/No]
 21. i. If yes, provide the following:
 22. a. Full name associated with the online JUUL account;
 23. b. E-mail address(es) associated with the online JUUL account; and
 24. c. Physical address(es) associated with the online JUUL account
 25. d) Identify the JUUL products the user used (dropdown menu)
 26. e) Approximate month and year of first use of a JUUL product (dropdown menu)
 27. f) Approximate month and year of last use of a JUUL product (dropdown menu)

- 1 f) JUUL user's age at first use of a JUUL product
- 2 g) Indicate frequency of usage: (dropdown menu)
 - 3 i. Daily
 - 4 ii. Weekly
 - 5 iii. Occasional
 - 6 iv. Other (describe)
- 7 h) On average, approximately how many JUULpods did the user use per week during
8 JUUL usage? (specify)
- 9 i) Did the user use other vape products and/or other products containing nicotine
10 before using JUUL products?
 - 11 i. If yes, indicate the type(s) of product(s) used:
 - 12 a. Other vape products or e-cigarettes
 - 13 b. Cigarettes
 - 14 c. Cigars
 - 15 d. Smokeless tobacco (e.g., chewing tobacco, dip/snuff, snus)
 - 16 e. Other
 - 17 ii. If yes, indicate frequency of usage:
 - 18 a. Daily
 - 19 b. Weekly
 - 20 c. Occasional
 - 21 d. Other (describe)
- 22 j) Has user used other vape products and/or other products containing nicotine since
23 his/her first use of JUUL products?
 - 24 i. If yes, indicate the type(s) of products used:
 - 25 a. Other vape products or e-cigarettes
 - 26 b. Cigarettes
 - 27 c. Cigars
 - 28 d. Smokeless tobacco (e.g., chewing tobacco, dip/snuff, snus)
 - 29 e. Other
 - 30 ii. If yes, indicate frequency of usage:
 - 31 a. Daily
 - 32 b. Weekly
 - 33 c. Occasional
 - 34 d. Other (describe)

16. Indicate the user's alleged injury(ies) the plaintiff(s) claims were caused by JUUL products
from the drop-down box:

- 2 a) Economic loss
- 3 b) Addiction
- 4 c) Seizure
- 5 d) Stroke
- 6 e) Heart attack
- 7 f) Other cardiovascular diagnosis (specify)
- 8 g) E-cigarette, or vaping, product use associated lung injury (EVALI)
- 9 h) "Popcorn lung"/ bronchiolitis obliterans
- 10 i) Acute eosinophilic pneumonia/pulmonary eosinophilia
- 11 j) Bronchitis and pneumonitis due to gases, fumes and vapors/chemical pneumonitis
- 12 k) Pneumonitis due to inhalation of oils and essences/lipoid pneumonia
- 13 l) Acute respiratory distress syndrome (ARDS)
- 14 m) Acute interstitial pneumonitis
- 15 n) Other specified interstitial pulmonary disease
- 16 o) Lung transplant
- 17 p) COPD
- 18 q) Emphysema
- 19 r) Asthma
- 20 s) Non-contagious pneumonia
- 21 t) Bronchitis
- 22 u) Other respiratory diagnosis (specify)
- 23 v) Mental health/behavior issues/suicide/suicidal thoughts/attempts
- 24 w) Pregnancy complications, birth defects
- 25 x) Death associated with any of the above (specify cause of death)
- 26 y) Other personal injury (specify)

27 17. For any injury other than economic loss, provide the medical record page showing
28 diagnosis and date, if any exists and is available. Alternatively, state that medical records
were ordered and identify the date they were ordered. If no medical records were ordered,
provide an explanation as to why they could not be ordered recognizing that lack of time or
resources is not an adequate explanation:

18. Certification

1
2 The JUUL user must sign and date the form below (online certification):

3 I declare under penalty of perjury that the following is true and correct: I used a JUUL
4 product and, to the best of my knowledge, information and belief, I suffered [insert injuries
5 indicated above].

6 Date: _____

Signature: _____

7 Name: _____

8
9 **Alternative if the case was brought by a representative¹:** The JUUL user's
10 representative must sign and date the form below (online certification):

11 I declare under penalty of perjury that the following is true and correct to the best of my
12 knowledge, information and belief: [The JUUL user] used a JUUL product and suffered
13 [insert injuries indicated above].

14 Date: _____

Signature: _____

15 Name: _____

28 _____
29 ¹ I.e., if the JUUL user is a minor, incapacitated or deceased.

EXHIBIT B**Initial Census Data for Filed Non-Public Entity Class Cases in Federal Court**

1. Case name
2. Case number
3. Name of the court in which the complaint was initially filed
4. Filing date of the complaint
5. Named plaintiff(s) in the complaint
6. Named defendant(s) in the complaint
7. Name of the JUUL user identified in the complaint
8. User's date of birth
9. User's social security number – last four digits
10. Current address of the JUUL user
11. Is the JUUL user deceased? [Yes/No]
12. Was the case brought by a representative (e.g., JUUL user was a minor, incapacitated or deceased):
 - d) Name of the JUUL user's representative
 - e) Relationship of the representative to the JUUL user
 - f) Current address of the representative
13. Plaintiff law firm(s) representing the plaintiff(s), address, phone number, and email address
14. Name of the counsel responsible for completion of this form, firm name, address, phone number, and email address
15. JUUL Usage Information:
 - k) Did the JUUL user purchase JUUL products? [Yes/No]
 - l) Did the JUUL user ever purchase JUUL products directly from JUUL Labs, Inc. online (i.e., from juul.com or juulvapor.com, as opposed to another retailer)? [Yes/No]
 - i. If yes, provide the following:
 - a. Full name associated with the online JUUL account;
 - b. E-mail address(es) associated with the online JUUL account; and
 - c. Physical address(es) associated with the online JUUL account
 - m) Identify the JUUL products the user used (dropdown menu)
 - n) Approximate month and year of first use of a JUUL product (dropdown menu)
 - o) Approximate month and year of last use of a JUUL product (dropdown menu)

- 1 p) JUUL user's age at first use of a JUUL product
- 2 q) Indicate frequency of usage: (dropdown menu)
 - 3 i. Daily
 - 4 ii. Weekly
 - 5 iii. Occasional
 - 6 iv. Other (describe)
- 7 r) On average, approximately how many JUULpods did the user use per week during
8 JUUL usage? (specify)
- 9 s) Did the user use other vape products and/or other products containing nicotine
10 before using JUUL products?
 - 11 i. If yes, indicate the type(s) of product(s) used:
 - 12 a. Other vape products or e-cigarettes
 - 13 b. Cigarettes
 - 14 c. Cigars
 - 15 d. Smokeless tobacco (e.g., chewing tobacco, dip/snuff, snus)
 - 16 e. Other
 - 17 ii. If yes, indicate frequency of usage:
 - 18 a. Daily
 - 19 b. Weekly
 - 20 c. Occasional
 - 21 d. Other (describe)
- 22 t) Has user used other vape products and/or other products containing nicotine since
23 his/her first use of JUUL products?
 - 24 i. If yes, indicate the type(s) of products used:
 - 25 a. Other vape products or e-cigarettes
 - 26 b. Cigarettes
 - 27 c. Cigars
 - 28 d. Smokeless tobacco (e.g., chewing tobacco, dip/snuff, snus)
 - 29 e. Other
 - 30 ii. If yes, indicate frequency of usage:
 - 31 a. Daily
 - 32 b. Weekly
 - 33 c. Occasional
 - 34 d. Other (describe)

16. Indicate the user's alleged injury(ies) the plaintiff(s) claims were caused by JUUL products
from the drop-down box:

- 2 z) Economic loss
- 3 aa) Addiction
- 4 bb) Seizure
- 5 cc) Stroke
- 6 dd) Heart attack
- 7 ee) Other cardiovascular diagnosis (specify)
- 8 ff) E-cigarette, or vaping, product use associated lung injury (EVALI)
- 9 gg) "Popcorn lung"/ bronchiolitis obliterans
- 10 hh) Acute eosinophilic pneumonia/pulmonary eosinophilia
- 11 ii) Bronchitis and pneumonitis due to gases, fumes and vapors/chemical pneumonitis
- 12 jj) Pneumonitis due to inhalation of oils and essences/lipoid pneumonia
- 13 kk) Acute respiratory distress syndrome (ARDS)
- 14 ll) Acute interstitial pneumonitis
- 15 mm) Other specified interstitial pulmonary disease
- 16 nn) Lung transplant
- 17 oo) COPD
- 18 pp) Emphysema
- 19 qq) Asthma
- 20 rr) Non-contagious pneumonia
- 21 ss) Bronchitis
- 22 tt) Other respiratory diagnosis (specify)
- 23 uu) Mental health/behavior issues/suicide/suicidal thoughts/attempts
- 24 vv) Pregnancy complications, birth defects
- 25 ww) Death associated with any of the above (specify cause of death)
- 26 xx) Other personal injury (specify)

27 17. For any injury other than economic loss, provide the medical record page showing
diagnosis and date, if any exists and is available. Alternatively, state that medical records
28 were ordered and identify the date they were ordered. If no medical records were ordered,
provide an explanation as to why they could not be ordered recognizing that lack of time or
resources is not an adequate explanation:

18. Description of the proposed class(es) and/or subclass(es):

19. Claims asserted (including statute and state under which common law claims are brought):

20. Remedies sought in the Complaint:

1 21. Certification

2 The JUUL user must sign and date the form below (online certification):

3 I declare under penalty of perjury that the following is true and correct: I used a JUUL
4 product and, to the best of my knowledge, information and belief, I suffered [insert injuries
5 indicated above].

6 Date: _____

7 Signature: _____

8 Name: _____

9 **Alternative if the case was brought by a representative²:** The JUUL user's
10 representative must sign and date the form below (online certification):

11 I declare under penalty of perjury that the following is true and correct to the best of my
12 knowledge, information and belief: [The JUUL user] used a JUUL product and suffered
13 [insert injuries indicated above].

14 Date: _____

15 Signature: _____

16 Name: _____

28

2 ² I.e., if the JUUL user is a minor, incapacitated or deceased.

EXHIBIT C

Initial Census Data for Filed Public Entity Cases in Federal Court

1. Case name
2. Name of the court in which the complaint was initially filed
3. Case number
4. Filing date of the complaint
5. Named plaintiff in the complaint
6. Named defendant(s) in the complaint
7. Plaintiff law firm(s) representing the plaintiff, address, phone number, and email address
8. Counsel responsible for completion of this form
 - a. Name, firm, address, email address, phone number for counsel
9. Type of public entity
10. Address of the public entity
11. If the plaintiff is a school district, identify the number of schools in the district
12. If the plaintiff is a school district, identify the approximate number of students in the district
13. If the plaintiff is a state, county, or municipality, identify the approximate number of citizens residing within it
14. Identify the causes of action asserted (including statute and state under which common law claims are brought)
15. If a proposed class action, provide a description of the proposed class
16. Identify the alleged harm(s) for which you are seeking compensation in this case
17. Identify the remedies sought in the Complaint

EXHIBIT D**Initial Census Data for Retained Clients with Potential Cases (Non-Public Entity)**

1. Identify the plaintiff law firm(s) and counsel seeking leadership appointment
2. Identify counsel responsible for completion of this form
 5. a. Name, firm, address, email address, phone number for counsel
3. For each retained client with a potential case:
 7. a. Identify the JUUL user's state of residence
 8. b. Is the JUUL user a minor?
 9. c. Year the user first used JUUL (dropdown menu)
 10. d. Indicate user's alleged injury(ies) you expect the user will claim were caused by JUUL products from the drop down box
 11. 1) Economic loss
 12. 2) Addiction
 13. 3) Seizure
 14. 4) Stroke
 15. 5) Heart attack
 16. 6) Other cardiovascular diagnosis (specify)
 17. 7) E-cigarette, or vaping, product use associated lung injury (EVALI)
 18. 8) "Popcorn lung"/ bronchiolitis obliterans
 19. 9) Acute eosinophilic pneumonia/pulmonary eosinophilia
 20. 10) Bronchitis and pneumonitis due to gases, fumes and vapors/chemical pneumonitis
 21. 11) Pneumonitis due to inhalation of oils and essences/lipoid pneumonia
 22. 12) Acute respiratory distress syndrome (ARDS)
 23. 13) Acute interstitial pneumonitis
 24. 14) Other specified interstitial pulmonary disease
 25. 15) Lung transplant
 26. 16) COPD
 27. 17) Emphysema
 28. 18) Asthma
 29. 19) Non-contagious pneumonia
 30. 20) Bronchitis

- 1 21) Other respiratory diagnosis (specify)
- 2 22) Mental health/behavior issues/suicide/suicidal thoughts/attempts
- 3 23) Pregnancy complications, birth defects
- 4 24) Death associated with any of the above (specify cause of death)
- 5 25) Other personal injury (specify)

6 4. Notes:

- 7 a. Do not fill out this form unless the client has been retained
- b. No personal identifying information will be provided

1 **EXHIBIT E**

2 **Initial Census Data for Retained Clients with Potential Cases (Public Entity)**

3 1. Identify the plaintiff law firm(s) and counsel seeking leadership appointment

4 2. Counsel responsible for completion of this form

5 a. Name, firm, address, email address, phone number for counsel

6 3. Type of public entity

7 4. State of public entity

8 5. Notes:

9 a. Do not fill out this form unless the client has been retained

10 b. No identifying information will be provided